

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

FEB - 4 2009

CLERK, U.S. DISTRICT COURT
BY _____ DEPUTY

FERNANDO CANTU OROZCO, PRO SE,
TDCJ-CID #1231450,

Plaintiff,

v.

2:07-CV-0067

TERRY JOHNSON ET AL., Officer,

Defendants.

PARTIAL ORDER OF DISMISSAL

Plaintiff FERNANDO CANTU OROZCO, acting pro se and while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against several defendants employed by or otherwise associated with the Texas prison system and was granted permission to proceed *in forma pauperis*.

On December 19, 2008, a Report and Recommendation of Partial Dismissal was issued by the United States Magistrate Judge recommending dismissal of plaintiff's claims against defendants BRUCE ZELLER, Sr. Warden, HERMAN NUSZ, Director of Nursing, and Sgt. JIMMY BAGBY without prejudice for failure to state a claim on which relief can be granted.

Plaintiff made his Objections by two pleadings filed on December 31, 2008. One was entitled "Motion to Object to judge's Partial dismissal an show;" and the other, "Motion to Object to Judges Partial Dismissal an Order Reconsideration."

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections and the amended complaint filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge that the civil rights claims against defendants ZELLER, NUSZ, and BAGBY be dismissed without prejudice for failure to state a claim on which relief can be granted should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge that the civil rights claims against defendants ZELLER, NUSZ, and BAGBY be dismissed without prejudice for failure to state a claim on which relief can be granted.

IT IS THEREFORE ORDERED that the Civil Rights Claims by plaintiff FERNANDO CANTU OROZCO against defendants BRUCE ZELLER, Sr. Warden, HERMAN NUSZ, Director of Nursing, and Sgt. JIMMY BAGBY are DISMISSED WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Clerk shall send a copy of this Order to plaintiff and to any attorney of record.

IT IS SO ORDERED.

ENTERED this 3rd day of February, 2009.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE